

DECISION MEMO
PRIORITY SPECIAL USE AUTHORIZATION FOR
Au Sable River Outfitter/Guide Watercraft Special Use Permits

USDA-Forest Service, Eastern Region, Huron-Manistee National Forests
Mio, Harrisville, and Tawas Ranger Districts
Oscoda, Alcona and Iosco Counties, Michigan

I. DECISION

A. Description of Decision

My decision is to allow continued use of outfitter/guide (O/G) livery services on the Au Sable River from 2007 to 2011. Four special use permits will be issued to previous commercial permit holders with the following ration of watercrafts and locations of river access sites on the Au Sable River.

The combined use authorized with the four priority special use permits is "delivery, launching, resting, and/or recovery of watercrafts":

- Average on Saturdays of 270 watercrafts with a maximum of 420 watercrafts on any one day at **McKinley Landing**, Section 15, T26N, R4E, Oscoda County, Michigan;
- Average on Saturdays of 108 watercrafts with a maximum of 210 watercrafts on any one day at **4001 Bridge Landing**, Section 28, T26N, R5E, Alcona County, Michigan;
- Low use with no watercraft limitations at **Bobcat Creek** landing, Section 23, T25N, R5E, Alcona County, Michigan,
- Average of 50 watercrafts per day with a maximum of 55 watercrafts on any one day at **Whirlpool**, section 31 of T24N R9E, Iosco County, Michigan,
- For one permit the ration is from January 1 to July 1 a maximum of 50 watercrafts per day and from July 1 to December 31 a maximum of 70 watercrafts per day; for a second permit allows "recovery only" of 65 watercraft per day at **Thompson's Landing**, Section 2, T24N R5E, Iosco County, Michigan,
- No limitation on watercrafts but a promoting of watercrafts off the river by 6:00 p.m. at **Rollways**, Section 24, T24N R5E, Iosco County, Michigan

Exhibit A, Location Map, shows the sites listed above.

These permits grant no authority on non-federal river access sites.

This decision will be implemented through issuance of four five-year priority special use permits that comply with the requirements of this decision and with laws, regulations, and other legal requirements. The Special Use Permit requires the permit holder to annually submit an operating plan, pay required fees, maintain insurance

coverage, secure necessary permits required by law, provide nondiscrimination in employment and services, and comply with all clause of the special use permit.

It is also my decision that a special use fee will be charged for these authorizations because the outfitter/guides are commercial business and do not qualify for a fee waiver in accordance with Code of Federal Regulations Title 36 par 251, section 57.

B. Purpose of Decision

The purpose of the decision is to respond to requests for Outfitter& Guide Livery Special Use Permits on the Au Sable River. The Tawas, Harrisville, and Mio Ranger Districts, Huron-Manistee National Forests, received priority use requests from four previously permitted commercial Outfitter/Guide Special Use permit holders. The requests are for continued use of Au Sable river access sites on National Forest System lands.

Outfitter/guide operations are generally from May through October offering watercraft rental and guiding services. Watercraft rented includes canoes, kayaks, tubes and occasional drift boat. These authorizations are for landings located on National Forest System lands and do not include use at non-federal river access sites. Each applicant has been in compliance with their previous permit terms, conditions, and operating plans.

Background: A decision was made May 28, 1992 by Forest Supervisor Stephen A. Kelly allowing and limiting permitted commercial O/G livery services on the Pere Marquette, Big Manistee, Little Manistee, White, and Au Sable Rivers. The level of use on the Au Sable River was established from the existing liveries, their historic use on the river as set forth in the Management Direction for the Au Sable National Scenic River, dated July 27, 1988. Based on these considerations there have been three permitted liveries serving the Scenic portion of the Au Sable River (Mio to 4001 landing) and four liveries serving mostly the middle and lower sections of the Au Sable River (Bobcat Creek landing to Oscoda) since 1992.

Priority use permits are requested by the permit holder and granted after compliance of temporary permits over a period of time, generally two to three years. Priority permits for these watercraft and guiding services would be authorized for five years.

The proposal is consistent with the approved Forests' Land and Resource Management Plan, 2006 and the Management Direction for the Au Sable National Scenic River, dated July 27, 1988. The landings are located in Management Area (MA) 8.1, Special Areas encompassing the Au Sable National Scenic River, the Au Sable Valley Opportunity Area, and 6.1 Semiprimitive Nonmotorized Areas, 4.3 Roaded Natural Wetlands.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2 and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

A. Category of Exclusion

This project is within category 31.2(15) that includes “Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

B. Relationship to Extraordinary Circumstances

Steep Slopes or Highly Erosive Soils – Rolling to flat, the terrain is conducive to the activities included in the decision. The soils present are highly resistant to erosion. This is supported by topographical map review and field visits.

Existing use and past projects in these areas were determined to have no significant soil-related impacts. To further ensure that soil-related impacts are minimized, Best Management Practices are incorporated.

Threatened and Endangered Species or Their Critical Habitat – The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7 of this Act, a list of the listed and proposed, threatened or endangered species that may be present in the project area was requested from the U. S. Fish and Wildlife Service.

A Biological Assessment was conducted for the 2002 issuance of the same outfitter guide uses. There is no proposed change to the existing use and there is no change to habitat conditions. District wildlife biologists re-confirmed their determinations regarding endangered, threatened or sensitive species. There would be no effect on the Kirtland’s warbler because they are not known or expected in the area of the proposed actions (Exhibit B - Action Analysis, Biological Assessment. March 21, 2002, New Regional Forester’s Sensitive Species for Special Use Application, Au Sable River Watercraft Livery O/G, February 21, 2007 and Biological Evaluation, March 9, 2007).

Bald eagle occupied territories are all along the river. There is potential for some foraging disturbance, however, there would be no effect on nesting/brood rearing eagles. Any cumulative increase in disturbance along the river is insignificant. The proposed activities would have no effect on the bald eagles.

Also, biologists made a determination of effects regarding new Regional Forester's Sensitive Species. The activities of the O/G and watercraft on the river may impact individual American bittern, black-backed woodpecker, Canada warbler, golden-winged warbler, least bittern, olive-sided flycatcher, red-headed woodpecker, osprey, American marten and four-toed salamanders, black-crowned night heron, black tern, common loon, red-shouldered hawk, trumpeter swan, Blanding turtles, and wood turtles. Impacts are temporary in nature and/or encounters with people/ watercraft passing through the habitats are remote and are not likely to contribute to a trend toward Federal listing or a loss of viability to the population or species.

The Huron Zone botanist made a determination of effects on new Regional Forester's Sensitive Plant Species that the proposed actions may impact *Amerorchis rotundifolia*, *Botrychium oneidense*, *Carex schweinitzii*, *Cynoglossum boreale*, *Dalibarda repens*, *Juglans cinerea*, *Liparis lilifolia*, *Malaxis brachypoda*, *Poa paludigena*, *Polygonum careyi*, but is not likely to cause a trend to federal listing or loss of viability.

There are no direct impacts to the species around the public access sites because they are not known to be near these areas. If direct impacts do occur it would be temporary damage to the above ground plant parts. There is a chance of effects from incidental foot traffic of the O/G and people in watercraft going down the river if they stop along the way. Indirect impacts to degrade their habitats could happen through paths that develop from soil compaction and periodic wearing of the vegetation. However, impacts will not cause a loss of viability for any species, because damage would be localized (Exhibit C - Action Analysis, New Regional Forester's Sensitive Species for Special Use Application, Au Sable River Watercraft Livery O/G, February 21, 2007).

Spotted knapweed (*Centrura biebersteinii*) and other widespread non-native invasive species are present at the landings and probably initially introduced by overland vehicles. O/G activities in these areas may help to perpetuate the existing infestations by maintaining a disturbance. However, they are unlikely to spread the weeds much beyond the sites by canoeists.

Floodplains, Wetlands or Municipal Watersheds –

Floodplains - Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, "...the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any one year".

Existing recreational use at current developed sites and use areas area located in the Au Sable River floodplains. There is no change to the proposed use. This decision will not affect floodplains.

Wetlands – Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “...areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.”

The project areas are adjacent to the Au Sable River using existing developed sites. This decision will not affect wetlands.

Municipal Watersheds – Municipal watersheds are designated by Congress and managed under multiple use prescriptions in forest plans.

There are no municipal watersheds on the Forest. This decision will not affect municipal watersheds.

Congressionally Designated Area –

Wilderness - The project is not in or near Wilderness. The only Wilderness Area within the Huron-Manistee National Forests is Nordhouse Dunes and it is located over 120 miles from the project. This decision does not affect Wilderness.

Wilderness Study Areas - There are no Wilderness Study Areas on the Forests. This decision will not affect Wilderness Study Areas.

National Recreation Areas - There are no National Recreation Areas on the Forests. This decision will not affect National Recreation Areas.

National Scenic River Areas – McKinley landing and 4001 Bridge landing are the only permitted landings located within the Au Sable National Scenic River corridor. The action is consistent with management direction in the Huron-Manistee National Forests Land and Resource Management Plan, Management Direction for the Au Sable National Scenic River.

Inventoried Roadless Areas – The project is not in or near the “Bear Swamp” Roadless Area. This decision will not affect inventoried roadless areas.

Research Natural Areas – There are no Research Natural Areas (RNA) in the decision area. The closest RNA, Reid Lake, is approximately 12 miles from the project. This decision will not affect RNA’s.

Native American Religious or Cultural Site, Archaeological Sites or Historic Properties or Areas - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site,

building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. Surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision. A ‘no properties affected’ determination was made.

Additionally, the Federal government has trust responsibilities to Tribes under a government-to-government relationship to insure that the Tribes reserved rights are protected. Consultation with tribes helps insure that these trust responsibilities are met. The Forest consulted with potentially affected tribes. The intent of this consultation has been to remain informed about Tribal concerns. No tribal concerns were identified for this project.

No extraordinary circumstances related to this project were identified.

III. PUBLIC INVOLVEMENT

Scoping was conducted internally on this proposal and the project has been listed in the “Schedule of Proposed Actions” (SOPA) since **/**/07. This publication is sent to interested parties and is posted on the Forests’ website [<http://www.fs.fed.us/r9/hmnf/pages/PlanningandProjects/SOPA.htm>]. No negative comments regarding the proposal were received. There was an inquiry from Consumers Energy to be notified of the decision, but they had no comments or concerns.

As provided for in 36 Code of Federal Regulations (CFR) 215.4, this action is not subject to notice and comment procedures.

36 CFR 215.4 – The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31.

IV. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent laws below:

Environmental Justice (EO12898) – This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in the decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act – This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Land and Water Conservation Fund Act of September 3, 1964 - Section 4c of this Act authorizes permits for recreation, such as events, group activities, and outfitter/guide. This decision is consistent with this Act.

The Federal Land Recreation Enhancement Act (REA), 2005 - The 10-year Act authorizes the Secretaries of the Interior and Agriculture to establish, modify, charge and collect recreation fees at Federal recreation lands and waters as provided for in the Act. This decision is consistent with this Act.

The Act of March 4, 1915 – This act authorizes term permits for structures or facilities on National Forest System land, such as recreation residences, resorts and campgrounds. This decision is consistent with this Act.

I have summarized the pertinent regulations below:

Title 36, Code of Federal Regulations, Part 251, Subpart B – This subpart provides direction for special uses management on National Forest System lands, including guidance pertaining to the special-use process; terms and conditions of use; rental fees; fee waivers; termination, revocation, suspension, and modification of existing authorizations; and permit administration.

V. ADMINISTRATIVE REVIEW OR APPEAL

This decision is not subject to a higher level of administrative review or appeals pursuant to 36 CFR 215.12 (f), Decisions and actions not subject to appeal.

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Further information about this decision can be obtained from Pat Thompson at the Mio Ranger District Office, 107 McKinley Road, Mio, Michigan, 48647; Telephone: 989-826-3252; TTY/TDD: 989-826-3592; FAX: 989-826-6073.;email pthompson@fs.fed.us.

VIII. SIGNATURE AND DATE

I have concluded that this decision qualifies for categorical exclusion from documentation in an environmental impact statement or environmental assessment as identified by the Chief of the Forest Service in FSH 1909.15, Chapter 30, Section 31.2 (15) - "Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization."

It is my finding that there are no extraordinary circumstances which would affect my choice of categorical exclusion.

In addition, I have concluded there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

My conclusions are based on information presented in this document and the entirety of the Project Record.

/s/ Leanne M. Martens

LEANNE M. MARTEN
Forest Supervisor

5-4-07

Date

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